

# Serving Non-Profits

Continuing Professional Development

Law Society of Nunavut

3 December 2020

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# Today's Topics

Incorporation

Governance

Risks

Policies

Special Cases

# Incorporation

Non-profits are corporations, created by filing the right papers with the right registry/ies, and maintained by annual filings.

*Societies Act*, RSNWT (Nu) 1988, c S-11 <http://canlii.ca/t/8l6c>

*Canada Not-for-Profit Corporations Act*, SC 2009, c 23 <http://canlii.ca/t/8l9q>

A corporation can only carry on activities in a jurisdiction in which it is registered.

If already registered elsewhere (including federally) must register extra-territorially in Nunavut.

If all activities are in Nunavut: recommend territorial (only one registry, one set of filings.)

If activities outside Nunavut: recommend federal (easy to do online) with extra-territorial registration in Nunavut and every other province/territory in which it operates.

# Incorporation

The main difference between a non-profit corporation and a business corporation is that the benefit from the enterprise is not profit (\$\$ to owners) but is shared among its members (ex: ski club) or community (ex: food bank).

A business corporation is *accountable* to its shareholders, directly or through their elected board. A non-profit is *accountable* to its members through their elected board.

Accountability is literal (as well as figurative): an ability to provide accounts. A non-profit must keep good books and the members must be able to see them.

A non-profit may have to file returns with CRA (charitable organizations and some condo corporations).

# Incorporation

If a non-profit owns or rents property, it needs property insurance. If it engages in activities that create any kind of risk, it probably needs liability insurance, and it may need waivers or an assumption-of-risk form for participants.

If it has employees, it must comply not only with employment law but also have certain policies for those employees.

If it engages in any commercial activity (any activity involving money, including fundraising, collecting dues from members, ticket sales...) it must comply with privacy law. Which means it has to have good tech security.

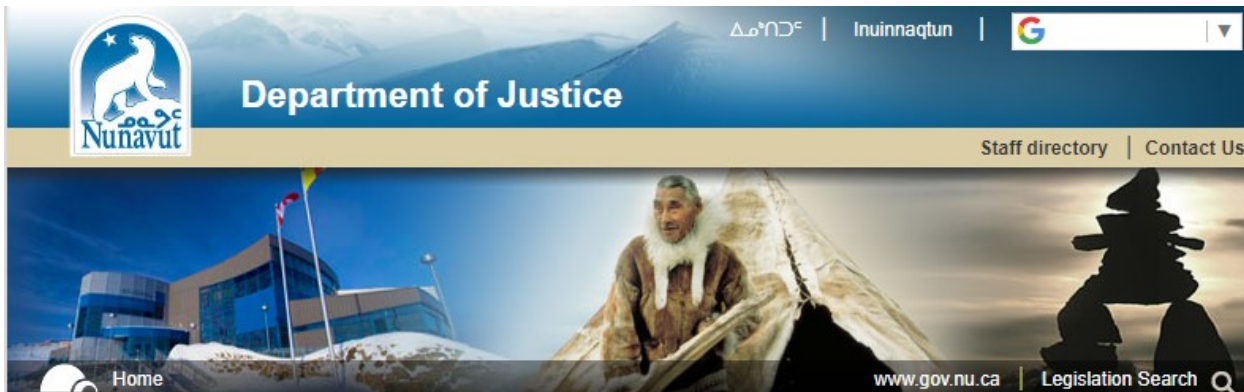
**Good basic advice to any corporation, non-profit or otherwise, is “I am only a lawyer. You need a team of advisors: an accountant, a good insurance adviser, and good tech support.”**

# Incorporation: Territorial

## Nunavut *Societies Act*

administered by Legal Registries <http://nunavutlegalregistries.ca/>

Forms online [http://nunavutlegalregistries.ca/cr\\_forms\\_en.shtml](http://nunavutlegalregistries.ca/cr_forms_en.shtml)



Minister  
LEGAL REGISTRIES  
Corporate Registries  
Personal Property Registry  
Land Titles Office  
Securities Office  
Commissioner for Oaths and Notary Public  
Contact Us

### Legal Registries

The Legal Registries Division administers the registration of corporations, various commercial documents, securities brokers and issuers, and land ownership. Almost all records are available to the public to view or obtain copies.

#### IMPORTANT NEWS

##### OUR OFFICE HAS MOVED

Please be advised that our office has moved to the following location:

4th Floor, Building 1106, IQALUIT NU

Our [mailing address](#) remains unchanged.

##### CURRENT PROCESSING OF CORPORATE REGISTRIES SUBMISSIONS

Please be advised that we are not currently in a position to process Corporate Registries

### Forms for Societies

Societies Act Fee Schedule	<a href="#">PDF</a>	
Application for Incorporation	<a href="#">Form 1</a>	<a href="#">Instructions</a>
Notice of Registered Office	<a href="#">PDF</a>	
Notice of Directors	<a href="#">PDF</a>	
Financial Statements	<a href="#">PDF</a>	
Sample Resolution - Enactment of New Bylaws	<a href="#">PDF</a>	<a href="#">Instructions</a>
Sample Resolution - Enactment of New Constitution	<a href="#">PDF</a>	
Sample Statutory Declaration for Dissolution of Society	<a href="#">PDF</a>	<a href="#">Instructions</a>

Lots of good information on the website, including a guide for Societies dealing with the Registry:

[http://nunavutlegalregistries.ca/cr\\_pdf\\_en/BCA/Forms/SOC\\_Guide\\_Incorporation.pdf](http://nunavutlegalregistries.ca/cr_pdf_en/BCA/Forms/SOC_Guide_Incorporation.pdf)

# Incorporation: Territorial

## **To incorporate**

- Application for Incorporation with five subscribers and \$50 fee
- Bylaws in compliance with s. 5. Sample bylaws available from Registry. (Pro tip: a Society does not need a seal, and the bylaw just has to say, “The Society has no seal.”)
- Notice of Registered Office and Notice of Directors (street and postal addresses)

## **To maintain good standing**

- Annual filings (including notice of directors and a financial statement) within 14 days of the AGM
- And if that has not been done to date, previous years’ filings need to be remedied.

## **To amend bylaws**

- AGM approval or an extraordinary resolution.
- Bylaw amendments must be registered with Registrar to take effect. \$20 filing fee.

## **To dissolve a society**

- An extraordinary resolution
- Application to Registry with statutory declaration confirming assets have been disposed of, and no outstanding liabilities.

# Incorporation: Federal

*Canada Not-for-Profit Corporations Act* <http://canlii.ca/t/8l9q>

Superb website:

[http://www.strategis.gc.ca/eic/site/cd-dgc.nsf/eng/h\\_cs03925.html](http://www.strategis.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03925.html)

Can do everything online

The screenshot shows the Government of Canada website for Not-for-profit corporations. The header includes the Canadian flag, the text "Government of Canada" and "Gouvernement du Canada", and a search bar. A "MENU" button is visible. The breadcrumb trail reads: "Canada.ca > Innovation, Science and Economic Development Canada > Corporations Canada".

The left sidebar contains a list of links: "Business corporations", "Not-for-profit corporations" (highlighted), "Cooperatives", "Boards of trade", "Naming a corporation", "Search for a Federal Corporation", "Online Filing Centre", "Monthly transactions", and "Keep your corporation in good shape".

The main content area is titled "Not-for-profit corporations". It features two informational boxes:

- Annual general meetings during COVID-19**: Federal not-for-profit corporations have options regarding holding their annual general meeting during the COVID-19 pandemic. Read [Annual meetings of federal corporations during the COVID-19 outbreak](#).
- To receive the latest news on not-for-profit corporations, you can subscribe to our notices.**

Below these boxes, a paragraph states: "Not sure if [all not-for-profit corporations are the same](#)? Read on to find everything you need to create and operate a not-for-profit corporation, or [incorporate](#) now."

The section "Operating a federal not-for-profit corporation" lists several topics with links:

- [Creating a not-for-profit corporation](#): What you have to do and how to do it.
- [The directors](#): The roles and responsibilities of the corporation's directors.
- [Corporate records and filing obligations](#): Maintaining corporate records and how to keep your corporation in good standing.
- [By-laws](#): Creating and changing the rules that govern the internal management of your corporation.
- [Services, fees and processing times](#): A full list of our services, how much they cost and how long the process takes.
- [Next steps following incorporation](#): You're incorporated, but now what?
- [The members](#): The rights and responsibilities of the corporation's members.
- [Financial statements and review](#): Understand the requirements for a public accountant and the level of financial review for your corporation.
- [Changing the structure or nature of the corporation](#): Making major modifications to your corporation or its activities.
- [Resources](#): Tools and information.



# Governance

## **The roles of board and staff**

In law, the Board is the elected governance of the organization - equivalent to the shareholders, the owners. The Board is boss; the CEO/ED is staff and accountable to Board.

Board is ultimately responsible for the organization, and responsible for holding the CEO/ED accountable.

In real life that structure is often inverted: CEO is boss, and Board is advisory, or even kept busy performing operational tasks under CEO's direction. This can happen when CEO is also the founder and /or President, and it can happen in a bigger organization with a fulltime CEO. This is always dangerous. Such organizations attract and enable grifters and embezzlers.

# Governance

NEWS 27 MAY 2016 – 7:00 PM EDT

## Nunavut administrator charged with fraud, theft

Dennis Zettler, veteran SAO in Baker Lake, faces three criminal charges

By NUNATSIAQ NEWS



Members of the RCMP in Baker Lake, seen here, arrested the hamlet's senior administrative officer, who has been charged with fraud and theft, on May 27. (PHOTO BY SARAH ROGERS)

A long-time senior administrator for the hamlet of Baker Lake has been charged with fraud and theft, following the discovery of a large amount of cash in a local residence May 27.

NEWS 31 MAY 2017 – 5:30 PM EDT

## Financial irregularities at YWCA Aggvik Nunavut, audit reveals

Expenses included a tour of Kensington Palace in London, England

By STEVE DUCHARME



The Qimaavik women's shelter in Apex: the GN is currently auditing YWCA Aggvik Nunavut, which runs the shelter. (FILE PHOTO)

Bounced cheques, personal travel expenses, expired licenses and undocumented wages, among others, were only a few of the more dubious financial irregularities pointed out in an audit last year of YWCA Aggvik Nunavut, the organization responsible for running Iqaluit's only women's shelter.

# Risks

## **Activity specific**

The nature of the enterprise determines many of the risks (the Fiddlers and Jiggers Society has different risks from QIA)

## **Volunteers**

- have many protections afforded employees
- privacy issues
- discipline issues

## **Minors and vulnerable people**

# Risks: Lack of Continuity

There are special risks for non-profits. One of the biggest risks is the volunteer board and/or high turnover on board.

- Lack of understanding that CEO is accountable to board.
- Lack of understanding that the board is accountable to the membership – a tendency to think of their role as leadership or inspiration, and not so much good housekeeping (accountability).
- Lack of institutional knowledge, lack of continuity (among other things, the new board does not know the legal advice given to the old board)
- Lack of business experience generally – may not know how to read financial statements
- Informality, and an unsubstantiated level of trust among members
- Gossip (especially deadly in personnel matters)

These all operate to erode accountability and good practice.

# Risks: Lack of Continuity

## **Continuity is achieved by policies**

- Written
- Easily accessible and regularly referred to
- In the most useable form possible. Consider
  - Signage
  - Checklists
  - Calendars
  - Online postings and email reminders
- Reviewed from time to time by Board

# Continuity Calendar

One of the most important policies is a calendar – a schedule for the year including the fiscal year end, and deadlines for required meetings (AGM) registry filings and reports to funders. Also useful to set expectations for new or prospective board members.

*Must be customized to the non-profit: do not use this sample.*

Date	Event	Responsibility	Source
<b>31-Mar End of fiscal year</b>			Constitution, Bylaws
<b>APRIL</b>	<b>Processing previous year end</b>		
	Get all bills, honoraria, etc paid to year end. Bring ledgers up to date, deliver to book-keeper for preparation of income tax returns and financial statements	Treasurer, Bookkeeper, Staff	
30-Apr	To GN: Unaudited report for previous fiscal year		GN Contribution Agreement
<b>MAY</b>	<b>Annual General Meeting</b> (the AGM itself could be in early June)		
	Make arrangements for AGM location, food and speakers if any		
21-14 days before AGM	Notice of Annual General Meeting (date, time and place)	President calls meeting	Constitution, Bylaws
	If appropriate, send package of materials to members: Agenda, Financial Statements, any resolutions or bylaw changes, and minutes of last AGM.	Treasurer/Secretary	Constitution, Bylaws
1 week before AGM	Confirm arrangements and attendance of AGM participants (those presenting reports)		
Day of AGM	Have extra AGM packages. Ensure equipment needed is in place and in working order.		
Right after AGM	Prepare minutes of AGM	Secretary	
No less than 14 days after AGM	Advise bank of any change in signatories, notify any others who should know of change in directors. If banking or book-keeper is to be changed, make those changes.	President and designate	
No less than 14 days after AGM	File at Registry the financial statements approved at the AGM, and a current list of Directors and their addresses and occupations.	Treasurer/Secretary	Societies Act s.18

# Continuity Calendar

*Must be customized to non-profit. Do not use this sample*

<b>JUNE</b>	<b>Getting the year going</b> First board meeting. Elect President, Treasurer, Secretary. New board member orientation. Review existing Strategic Plan, if any. Recommended: set Board's meeting schedule for the next year, next AGM and first meeting after next AGM. Set priorities for the year and if not, schedule a meeting for that sole purpose. Consider smaller working groups/committees to accomplish goals. Communicate priorities to staff asap, even if implementation will be delayed until autumn.	Board	
30-Jun	To GN: Audited Financial Statement for previous year	Treasurer	GN Contribution Agreement
<b>SEPTEMBER-DECEMBER</b>	<b>Practically speaking, this is when the Board accomplishes most of research, deliberation and decision-making, often through committees.</b>	Board	
20-Oct	To GN : mid-year unaudited report (April-September)		GN Contribution Agreement
15-Dec	To GN: YTD statement of income and expenditure;		GN Contribution Agreement
<b>JANUARY-FEBRUARY</b>	<b>Taking stock and looking forward</b> Consider work to date including progress and challenges.  Consider what, if anything, is to be decided at AGM beyond appointment of Board, approval of the financial statements and banking resolutions. (Other resolutions at AGM are for major things that require and amendment to bylaws)	Board	
	Succession: identify seats to be filled and approach candidates	Board	
<b>MARCH</b>	Finalize succession plans	Board	
	Work on reports, resolutions, etc. for AGM	Board, Staff	

# Policies

## **Some policies are required by law**

Occupational Health and Safety Regulations, Nu Reg 003-2016

- Harassment
- Health and safety policies and procedures
- Violence

*Personal Information Protection and Electronic Documents Act, SC 2000, c 5*

- Privacy (and tech security)

**Other policies are determined by the kind of risks the organization faces.**



# Policies required by law: Safety

## **Occupational Health and Safety Regulations, Nu Reg 003-2016**

21. (1) An employer shall provide an occupational health and safety program under this section **if**

**(a) there are 20 or more workers** who work at the work site; or

(b) the employer is so directed by the Chief Safety Officer.

*Safety Act*, RSNWT (Nu) 1988 <http://canlii.ca/t/8l6t>

"employer" means every partnership, group of persons, corporation, owner, agent, principal contractor, sub-contractor, manager or other authorized **person having charge of an establishment in which one or more workers are engaged in work;**

"worker" means a person engaged in work for an employer, **whether working with or without remuneration.**

Even if the worker threshold is not met, consider a safety policy.

# Policies required by law: Safety

Note: All the laws that require policies set out what must be in them.

21.(2) An occupational health and safety program for a work site must include

- (a) a statement of the employer's policy with respect to the protection and maintenance of the health and safety of workers;
- (b) an identification of hazards that could endanger workers at the work site, through a hazard recognition program;
- (c) measures, including procedures to respond to an emergency, that will be taken to reduce, eliminate and control the hazards identified...
- (d) – (k) *[plans, schedules, lists, training, committees etc.]*

(3) An occupational health and safety program must be implemented and updated in consultation with

- (a) the Committee or representative; and
- (b) the workers.

(4) An occupational health and safety program required under this section must be in writing and made available to the workers.

# Policies required by law: Harassment

## **Occupational Health and Safety Regulations**

34... (4) **An employer shall, in consultation** with the Committee or representative, or, if no Committee or representative is available, **the workers**, develop and implement a written policy that includes

- (a) a definition of harassment that is consistent with subsections (1), (2) and (3);

- (b) a statement that each **worker** is entitled to work free of harassment...

- (g) a description of the procedure that the employer will follow to inform a complainant and alleged harasser of the results of an investigation; and

- (h) a statement that the employer's harassment policy is not intended to discourage or prevent a complainant from exercising other legal rights.

(5) An employer shall make readily available to **workers** a copy of the policy required under subsection (4).

# Policies required by law: Violence

## **Occupational Health and Safety Regulations**

35: (3) An employer shall, at a work site where violence has occurred or could reasonably be expected to occur, after consultation with the Committee or representative or, if no Committee or representative is available, the workers, develop and implement a written policy to deal with potential violence

....

# Policies required by law: Privacy

*The Personal Information Protection and Electronic Documents Act (PIPEDA) applies when there is no equivalent provincial/territorial legislation. There is no equivalent legislation in Nunavut, so PIPEDA applies in Nunavut. If your non-profit has activities elsewhere, other privacy law may apply.*

## **Does it apply to non-profits?**

S. 4(1)(a) says PIPEDA applies to every organization in respect of personal information that the organization “collects, uses or discloses in the course of commercial activities.”

S. 2(1) says “commercial activity” means “any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.”

Non-profits do not need to comply if the only commercial thing they do is handle membership fees. If they get grants, sell tickets, pay workers, or do any other commercial activity, PIPEDA applies, and it also applies if the contact list or any part of it is sold or traded.

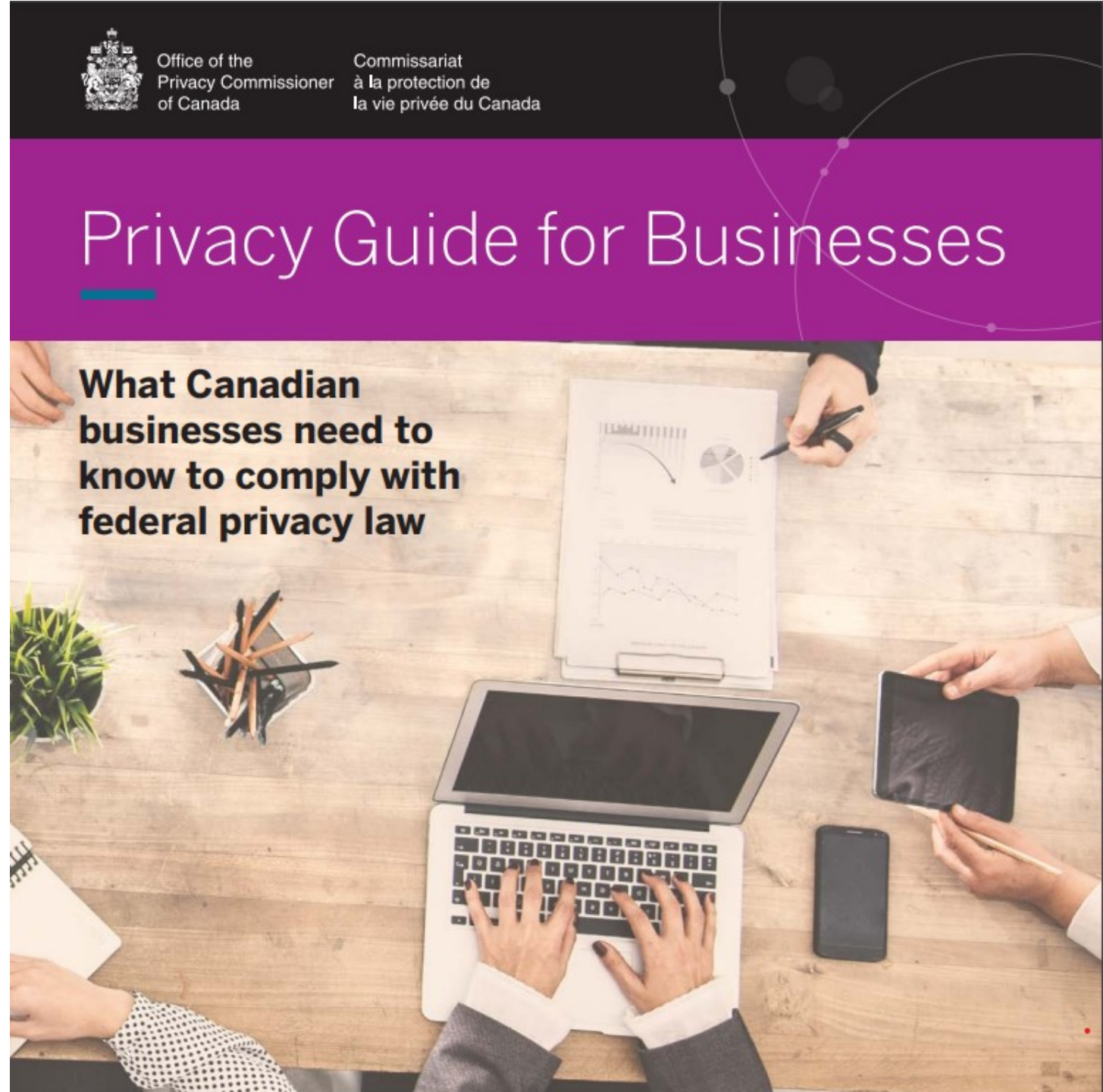
The expectation of privacy is increasing in general, and courts are expanding the application of the privacy obligation generally.

*Cautious advice: Recommend privacy consciousness, and the federal Privacy Guide to all non-profits. Recommend compliance to any organization that takes money from anybody other than its members.*

# Policies required by law: Privacy

This is the Privacy Guide

[https://www.priv.gc.ca/media/2038/guide\\_org\\_e.pdf](https://www.priv.gc.ca/media/2038/guide_org_e.pdf)



**BREAKING NEWS!**

# Privacy

On 17 November 2020 the Federal Government introduced the Digital Charter Implementation Act (Bill C-11), which proposes to modernize Canada's private sector privacy framework. The Bill will notably replace PIPEDA's privacy provisions with a newly enacted *Consumer Privacy Protection Act* (CPPA), which could significantly impact businesses operating in the private sector.

The legislation would give the federal privacy commissioner order-making powers, which would result in an increase in consequences for non-compliance and steeper fines for violations.

# Other Policies are Determined by the Risks

## **Policies safeguarding information and information tech**

Whether the organization is subject to privacy law or not, it needs to keep its tech and information secure both from the wicked world and from unauthorized access by its own members, volunteers and staff.

## **Policies about safeguarding money, property, keys, etc.**

If the club has snow machines or other equipment for use of the members, it needs policies about signing them out, not lending them to non-members, fuel and repairs, etc.

If money flows through, it needs banking policies, policies about who can authorize spending, procedures for receipts etc.



# Policies about Safeguarding Money

At a minimum there should be processes that control payments (withdrawals), including a reason for payment and a double authentication (signature or bank PIN)

NRC's practice: the CEO would email the bookkeeper:  
“pay \$amount to [person]”.

Somebody hacked into the CEO's email.

NEWS 18 OCTOBER 2018 – 11:17 AM EDT

## Computer hackers steal \$300,000 from Nunavut Resource Corp.

“It was pure fraud”

By JANE GEORGE



Representatives of the Nunavut Resource Corp. appear before the annual general meeting of the Kitikmeot Inuit Association on Oct. 16, 2017. The NRC, wholly owned by the KIA, has been the entity that handles the Grays Bay Port and Road proposal. From left to right: lawyer Jennifer King; lawyer Rod Northey; NRC President Charlie Evalik; and Scott Northey, NRC's chief operating officer. (PHOTO BY JANE GEORGE)

CAMBRIDGE BAY—The ambitious development plans of the Nunavut Resources Corp. were dealt a big blow earlier this year when its chief operating officer, Scott Northey, discovered the organization's bank account had been drained of about \$300,000.

# Other Policies are Determined by the Risks

## **Policies safeguarding information and information tech**

Whether the organization is subject to privacy law or not, it needs to keep its tech secure both from the wicked world and from unauthorized access by its own members.

## **Policies about safeguarding property, keys, etc.**

If the club has snow machines or other equipment for use of the members, policies about reserving or signing it out, not lending it to non-members, fuel and repairs, etc.

If money flows through, you need banking policies, policies about who can authorize spending, procedures for receipts etc.

# Other Policies are Determined by the Risks

- If there are both volunteers and children/vulnerable adults involved, policies for vetting and managing volunteers are a high priority.
- There may need to be policies around communication: who speaks for the organization (especially if many of its members are on social media).

There will always be a tension between the very good principle that you don't make a rule if you don't have to, and the all-too-common "I can't believe we have to make a rule about that".

# Special Cases

## **Non-profits that get grant money**

GN and GoC provide a lot of government services (transition houses, group homes, training, economic development etc) by funding a “non-profit” with “grant” money. It can more closely resemble a fee for services arrangement than a “grant”. Some non-profits handle millions of dollars of public money. Except for not making a profit, they are in effect businesses with considerable liability – but they still have volunteer boards.

Extensive reporting, privacy and communications requirements are set out in funding agreements, which may or may not be legible to the client.

*Takeaway for counsel: Get all the relevant funding agreements before giving advice.*

# Special Cases

## Condominium corporations

Condominium corporations are *sui generis*, created and governed by *Condominium Act*, RSNWT (Nu) 1988, c C-15 <http://canlii.ca/t/8l3s>. Note the requirement to have a reserve fund, and to direct a percentage of condo fees to that fund.

A condo corp does not pay income tax UNLESS it owns a unit or other property that it rents out to non-owners (not common in Nunavut). A condo corp **does** have to file income tax returns every year, even when the taxable income is nil. There is usually no penalty when a condo corp files several years of late income tax returns; make sure to tell your condo client this before they have a heart attack.

# Special Cases

## **Condominium corporations**

Condo corps are just like non-profits in terms of the risks of volunteer boards. They need solid banking policies. They generally have another set of rules besides their bylaws, that have grown up through practice, and they may have more than one such, and they can easily be inconsistent with each other, the bylaws, or the actual practice.

Note: the constitution and bylaws of most condo corps were created by the builder so he could sell the units. They are almost always the cheapest bylaw template the builder could buy or re-use - he does not care what happens after he sells the units. The bylaws usually do not reflect Nunavut realities, and problems can arise as a result.

# Special Cases

**Charitable organizations** can issue tax receipts for donations. CRA cares a LOT about that lost taxable income.

Charitable organizations must file lengthy return every year, more complicated than personal tax return.

To register as a charitable organization, the governing documents must establish

- That the organization has charitable objects, as defined by the Act (relieving poverty, advancing education, advancing religion, and “other purposes beneficial to the community in a way the law regards as charitable” (case law: includes arts, care for the elderly and ill))
- That it isn’t pursuing other purposes, or distributing income to its members.

GoC website has excellent resources, for example, “How to draft purposes for charitable registration” <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-019-draft-purposes-charitable-registration.html#toc14>

# Special Cases

## **Lawyers as Board Members**

Lawyers on boards are often presumed to know all the applicable law. Some organizations will assume that having a lawyer on the board is the same as having paid in-house counsel. The lawyer/board member may be expected to render opinions and advice – sometimes in real time at the table/zoom, on no notice (and often in the form of a challenge from somebody who believes himself an expert.)

A lawyer sitting on a board should make clear the limits of their expertise and knowledge, and recommend getting advice from a qualified lawyer when appropriate.

Do not sit on a board without some kind of insurance coverage, either part of your own professional insurance, or the organization's Directors' and Officers' insurance (D&O)



Stay safe  
Do good  
Have fun

Margaret Hollis